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ACQUIREMENT OF REAL PROPERTY BY AMERICAN CHURCHES

The ordinary method by which religious corporations or trustees for religious societies acquire real estate in the United States is by deed or will. The deed may be a patent from the state, or may represent a gift from an individual, or may be an ordinary business transaction. The will is generally made by some devout member of the church named as the beneficiary. These instruments, while they raise many intricate questions of trusts and charitable uses, and while they are subject to certain limitations upon religious societies in acquiring real estate, are construed like other similar instruments and upheld or declared void accordingly.

But while a deed or will is the ordinary means of devolving real estate on church organizations, it is by no means the only one. Congregations all over the country are in actual possession of property to which they have no record title. Even more often they hold property under deeds or wills which are void. Frequently expensive improvements have been made on such properties. To deprive churches of this property would frequently work great injustice and hardship. Since such possession cannot be justified under any deed or will, some other legal principles must be discovered, under which it can be upheld.

This has accordingly been accomplished. In cases where the church is incorporated and its possession of long duration the statute of limitations will be used to vest a title in fee in it. Where, however, the church is unincorporated¹ or its possession of too short a duration the statute cannot be applied. To meet the situation the doctrine of dedication, applicable originally only where the public as such is interested in a gift, will be extended to uphold such a possession. The application of these two doctrines to church affairs has given rise to some interesting developments, which it will be the purpose of this article to exhibit.

Adverse Possession.

In one form or another limitation laws will be found in all highly developed legal systems. They accordingly were made a part of the English law at an early date, first by judicial

¹ *Stewart v. White*, 128 Ala. 202, 30 So. 526, 55 L. R. A. 211.

legislation, later, by express statutory enactment. They now form an essential portion of the jurisprudence of every state in the United States. They have overcome all the prejudice that judges and attorneys, as well as laymen, have expressed against them. They are even favored to such an extent that only a statute, expressly excepting church organizations from its operation, and leaving no loophole of escape, will prevent its application to controversies in which a church is a party.²

Since all objections to these statutes have been abandoned, and since they apply generally in favor of and against individuals or corporations, it follows that they may be pleaded by³ or against⁴ religious organizations and may even be set up in a suit between two religious corporations.⁵ Far from being prejudiced by such a plea, courts will even declare the plea to be a just, proper, and meritorious defense; as was done in the remarkable cluster of cases involving the title of Trinity Church to certain property in New York City.⁶ These cases on account of the immense value of the property involved, the thorough manner in which they were presented to the courts, and the great care with which they have been decided, deserve a somewhat more extended statement.

The property in question is situated on Manhattan Island between the Hudson River and Broadway and north of the main business section of the city. It was formerly known as Domine's Bowery and Domine's Hook and comprised about one hundred and ninety acres. One Annetje Jans appears to have been its owner in 1663. Her devisees in 1671, with the exception of one or two, united in a "deed of transport" to Colonel Lovelace, then governor of New York. Under this deed the English government took possession. The land thereafter was successively known as the Duke's Farm, the King's Farm and the Queen's Farm. In 1075 it was granted to Trinity Church by a patent which on its face conveyed the entire estate.

² *Dudley v. Clark*, 225 Mo. 570, 164 S. W. 608, 613.

³ *Harpending v. Reformed Dutch Church*, 41 U. S. 455, 10 L. Ed. 1029.

⁴ *Craig v. Franklin County*, 58 Me. 479, 497; *Propagation Society v. Sharon*, 28 Vt. 603.

⁵ *Second Precinct in Rehoboth v. Carpenter*, 23 Pick. 131; *Society v. Bass*, 68 N. H. 333, 44 Atl. 485. See *Reformed Church of Gallupville v. Schoolcraft*, 65 N. Y. 134, reversing 5 Lans. 206.

⁶ *Bogardus v. Trinity Church*, 4 Paige 178, 203; same case, 4 Sandf. Ch. 633, 734.

The church went into possession and remained undisturbed till about 1785, when one of the descendants of Annetje Jans caused trouble for some years by entering certain parts of the land. He was however finally persuaded, in consideration of seven hundred pounds, to relinquish all his claims. The right of the church to the property was not again disputed till 1830, when one Bogardus, under the claim that he was a descendant of one of these heirs of Annetje Jans who had not joined in the deed of transport, commenced action, claiming a one thirtieth interest in the land. His theory was, that the church, by the deed of 1705, had become a tenant in common with the Jans heir, under whom he claimed. The church as a defense set up adverse possession since 1705 which plea was upheld in 1833, the Chancellor saying:

“If a clear, uninterrupted and exclusive possession of land for one hundred and twenty-five years, under a grant or conveyance purporting upon its face to be a valid conveyance of the whole property, is not sufficient to protect the occupant of the premises, against the claims of those whose ancestors may have once been owners of an undivided interest in the same, the titles to lands in those parts of the state are certainly very unsafe. For it would, in most cases, be found to be impracticable, after such a lapse of time, to trace out and establish a regular chain of title from every person who had once held an undivided interest in the premises.”⁷

While an appeal from this decision was pending which was not decided till 1835, when the decision of the chancellor was affirmed.⁸ Another suit was begun in 1834 by one Humbert, another descendant of Annetje Jans. The plaintiff admitted the actual possession by the church but claimed that the description in the deed of 1705 had, through the influence of the church, been made so ambiguous as to enable the church to fraudulently appropriate the plaintiff's land under color or pretense of said deed. This suit was but a fishing expedition to procure evidence for the trial of the Bogardus action. The bill was carefully drawn, not so much with reference to what could be proved, but rather with the purpose of making out “a prima facie claim, which would compel the defendants to exhibit and set forth their title deeds and documents, and thus enable the

⁷ *Bogardus v. Trinity Church*, 4 Paige 178, 203.

⁸ *Bogardus v. Trinity Church*, 15 Wend. 111.

complainants to avail themselves of any weak point, which they might discover in them, from carelessness in the mode of preparing papers at that distant period, or from the loss or destruction of some connecting links in the chain of documentary evidence during so many ages as have elapsed since this title was originally granted to these defendants."⁹ A demurrer was interposed by the church which was sustained both by the chancellor in 1838¹⁰ and by the Court for the Correction of Errors in 1840.¹¹ In discussing the statute Cowen, J., pointed out that, if fraud was allowed to be pleaded as an implied judge-made exception to the statute, the church would be thrown back on evidence not merely "obscured by the ordinary mists of tradition in a settled government, and under a well regulated system of conveyancing; but evidence which comes to us through the mutations of empire, the fury of revolutions, repeated changes in the law of descent, in the law of common assurances, and great defects at all times in the method of perpetuating the evidence of their existence."¹²

The attempt to procure evidence against the church by this subsidiary suit having failed, there was nothing now to do but to try out the Bogardus action on its merits with what evidence the plaintiff had on hand. A replication to the plea of the church was therefore filed, proofs were taken and the cause was finally brought to a hearing in 1846. The church was not in a position to prove its adverse possession by living witnesses farther back than 1870. For the period before that date documentary evidence more or less valuable was the only evidence available. Accordingly, old statutes, leases, works of history, maps, official declarations, pleadings and depositions in old lawsuits were collected in a marvellous mass of immensely persuasive evidence. Over five hundred leases, covering over one thousand lots and generally for terms of twenty-one years, were introduced in evidence. It was proved, that some four hundred and eighty lots had been sold outright by more than one hundred deeds executed by the church. The court, in holding that such possession was a proper and just defense in favor of the church and should be as readily conceded to it, as it would be to anyone else, said:

⁹ Furman, Senator, in *Humbert v. Trinity Church*, 24 Wend. 587, 787.

¹⁰ *Humbert v. Rector of Trinity Church*, 7 Paige 195.

¹¹ *Humbert v. Trinity Church*, 24 Wend. 587.

¹² *Humbert v. Trinity Church*, 24 Wend. 587, 610.

"The law on these claims is well settled, and it must be sustained in favor of religious corporations as well as private individuals. Indeed, it would be monstrous, if, after a possession such as has been proved in this case, for a period of nearly a century and a half, open, notorious, and within sight of the temple of justice, the successive claimants, save one, being men of full age, and the courts open to them all the time (except for seven years of war and revolution) the title to lands were to be litigated successfully, upon a claim which has been suspended for five generations. Few titles in this country would be secure under such an administration of the law; and its adoption would lead to scenes of fraud, corruption, foul justice and legal rapine, far worse in their consequences upon the peace, good order and happiness of society, than external war or domestic insurrection."¹³

All attempts at mulcting the corporation through a suit brought by individuals having thus completely failed, an attempt was made in 1856 to divest the church of its property through an ejectment suit brought by the state. The plaintiff simply relied on a presumption that it was *prima facie* the owner of all land in the state and proved the possession of the defendant. A nonsuit, on the ground that the plaintiff had failed to establish its title and that, if it had established it, such title was barred by the statute of limitations, was granted at the trial and upheld on appeal. With this case all attacks on the property of the church have come to an end.¹⁴

In surveying the other cases, in which church property has been protected by the application of the statute of limitations, it will be found, that they generally resemble the *Trinity Church Case*, not in the length of possession or the value of the property, but in the fact that there is generally some instrument giving color of title to the possession. It is elementary that such possession is more favored than mere naked possession. A person or corporation taking possession honestly under a void deed is entitled to more consideration than the mere squatter who simply appropriates the land. Therefore deeds to a church organization void because the grantor had no title,¹⁵ or because the purpose for which the property was bought was not expressed on their face,¹⁶ or because no legislative sanction was obtained as required

¹³ *Bogardus v. Trinity Church*, 4 Sandf. Ch. 633, 762.

¹⁴ *People v. Rector of Trinity Church*, 30 Barb. 537, affirmed 22 N. Y. 44.

¹⁵ *Taylor v. Public Hall Co.*, 35 Conn. 430; *Second Precinct in Rehoboth v. Carpenter*, 23 Pick. 131.

¹⁶ *Gump v. Sibley*, 79 Md. 165, 28 Atl. 977.

by the bill of rights,¹⁷ or because the grantee at the time was unincorporated,¹⁸ or because the grantor, a married woman, was not subjected to private examination,¹⁹ or because a necessary party had not been joined,²⁰ or because the value of the land was greater,²¹ or the quantum of it larger than the church, by its charter, was permitted to acquire,²² have served as foundations for an adverse possession by church corporations and have become important in their chain of title. It follows that a church may acquire by adverse possession more land²³ or land of greater value than the law, under which it exists, permits. The restriction imposed on the corporation is in no way the concern of any private individual but rather a question of governmental policy, with which individuals have nothing to do.²⁴ The title thus acquired is perfectly good as to the whole world except the state, and as to the state itself not void but only voidable at its option.²⁵

But while a written instrument is thus of great importance, it is not absolutely necessary. Title by adverse possession may be acquired without it. A church corporation, like any other individual or corporation, may simply take possession of property and such possession, if maintained for the requisite time, will be protected by the statute of limitations, to the extent of the substantial and actual inclosure.²⁶ A church corporation chartered in 1852, which merely takes possession of the property of a moribund congregation, and holds it for forty years, can therefore not be dislodged by persons claiming to represent the old corporation.²⁷ The title acquired by such adverse pos-

¹⁷ *Zion Church v. Hilken*, 84 Md. 170, 35 Atl. 9; *Regents of the University of Maryland v. Trustees of Calvary Church*, 104 Md. 635, 65 Atl. 398; *Dickerson v. Kirk*, 105 Md. 638; *Mills v. Zion Chapel*, 119 Md. 510, 87 Atl. 257.

¹⁸ *Reformed Church of Gallupville v. Schoolcraft*, 65 N. Y. 134, reversing 5 Lans. 206.

¹⁹ *Deepwater Railroad Co. v. Hanaker*, 66 S. E. (W. Va.) 104.

²⁰ *Brown v. Nye*, 12 Mass. 285.

²¹ *Humbert v. Trinity Church*, 24 Wend. 587, 629; *Bogardus v. Trinity Church*, 4 Sandf. Ch. 633, 657; *Harpending v. The Dutch Church*, 16 Pet. 492. In this last case the instrument was a will, not a deed.

²² *Dangerfield v. Williams*, 26 App. D. C. 508.

²³ *Dangerfield v. Williams*, *supra*.

²⁴ *Bogardus v. Trinity Church*, 4 Sandf. Ch. 633, 758.

²⁵ *Humbert v. Trinity Church*, 24 Wend. 587, 630.

²⁶ *Harpending v. Dutch Church*, 16 Pet. 455, 493.

²⁷ *First Presbyterian Society v. Bass*, 68 N. H. 333, 44 Atl. 485.

session is so perfect that a quit claim deed given by the former owner is of no significance and will not be accepted in evidence.²⁸

Since church corporations can thus acquire property by adverse possession, it becomes important to know just what, in the case of churches, will be considered as adverse possession. Clearly the use for twenty-nine years by a seceded minority of a congregation of its church building under its leave and license is not adverse, and hence cannot form even the inception of a title.²⁹ To be effective as a bar, such possession must be exclusive of the original owner, continuous as to time, and under a claim of right. The incidents of such possession will depend upon the nature of the property. Acts sufficient to constitute adverse possession of an empty lot will be insufficient, where a business block is in question. In regard to a church building its continuous control and use by the officers of the congregation for the purposes of public worship, will be treated as an actual possession as much as if they actually resided on the premises³⁰ and such possession may even extend to adjoining uninclosed and vacant land.³¹

The most interesting and important application of the doctrine of adverse possession, however, is in regard to trusts. Church property is generally quite well encumbered with uses. Where the original grantors have not created express trusts, courts have come to the rescue with the doctrine of implied trusts. Many states have gone so far as to attach a trust to all property acquired by religious associations. These trusts have sometimes proved to be a burden rather than a benefit. Instead of protecting the congregation they have prevented its growth. Some relief has been found by applying the statute of limitations for the purpose of eliminating such trusts. While it has been held, that a church trustee cannot hold adversely to the church,³² except where he has unequivocally repudiated the trust,³³ it is quite well established that the congregation may hold adversely

²⁸ *Bose v. Christ*, 193 Pa. 13, 44 Atl. 240.

²⁹ *Landis Appeal*, 102 Pa. 467. See *Stewart v. White*, 128 Ala. 202, 30 So. 526, 55 L. R. A. 211.

³⁰ *Macon v. Shepard*, 21 Tenn. 334; *Randolph v. Meek*, 8 Tenn. 58.

³¹ *Mather v. Ministers of Trinity Church*, 3 S. & R. 509; *Second Methodist Episcopal Church v. Humphrey*, 66 Hun 628, 21 N. Y. Supp. 89.

³² *Krauczunas v. Hoban*, 221 Pa. 213, 70 Atl. 740; *Ebbinghaus v. Killian*, 1 Mackey 247.

³³ *Church v. Newington*, 53 N. H. 595.

to the trustee where the latter is a mere dry trustee without any actual power or duty.³⁴

But the cases do not stop here. A religious society may acquire absolute possession and title of the property, which has come to it encumbered by a trust, by defiantly diverting it to a different use or appropriating it to a different religious community.³⁵ This possession, during the period of limitation, will of course be a precarious one, subject to be disturbed at any time, by an action to enforce the trust. But after the period of limitation has expired under these circumstances adverse possession will create a new title, stripped of the trust and fully marketable, so that specific performance of a contract, to take a mortgage on the same may be obtained.³⁶

However, to make such a possession adverse, the acts and declarations of the church must unambiguously show an intention to hold the property hostile to and clear of such trust. A declaration in the articles of incorporation of a congregation that all property of the church is vested in the corporation with full power of the latter to sell, convey, or otherwise dispose of it, will be sufficient for this purpose and will, after the necessary time has elapsed, fully clear the title.³⁷ A vote of a congregation declaring that henceforth their property shall be held for a purpose inconsistent with a presbyterian use, and that any trust for that purpose is hereby denied and repudiated, followed by an undisturbed possession of sixty years, will accomplish the same result.³⁸ Where property is held by trustees in trust for a religious society, such trust may even be eliminated, by an absolute deed from the trustees to the society, followed by twenty years possession.³⁹

But the statute of limitations will not be sufficient in all cases to accomplish the desired result. The possession may have been for a period shorter than that prescribed by the statute. Or the church may be unincorporated and hence incapable of taking the presumptive grant on which the doctrine of adverse pos-

³⁴ *Dees v. Moss Point Baptist Church*, 17 So. (Miss.) 1; *First Baptist Church of Sharon v. Harper*, 191 Mass. 196, 77 N. E. 778. See also *Dudley v. Clark*, 164 S. W. 608.

³⁵ *Burrows v. Holt*, 20 Conn. 459, 465.

³⁶ *Rother v. Sharp St. Station*, 85 Md. 528.

³⁷ *Sharp St. Station v. Rother*, 83 Md. 289, 85 Md. 528, 530.

³⁸ *Attorney General v. Federal Street Meeting House*, 69 Md. 1, 62.

³⁹ *Pine Street Congregational Society v. Weld*, 78 Mass. 570.

session rests. In either case the statute will not apply. Therefore the United States Supreme Court in a leading case, in which the possession of the church had been continued for some sixty years, refused to put its decision on the ground of adverse possession, saying: "Nor can any presumption of grant arise from the subsequent lapse of time; since there never has been any such incorporated Lutheran church capable of taking the donation."⁴⁰ Yet the court would not allow the property of be taken away from the church. It extended the doctrine of dedication to cover the case and thus secured to the church the full enjoyment of the property, while leaving the legal title and possibly a contingent remainder in the original owner. This brings us to the second part of this article.

Dedication.

Originally the doctrine of dedication was confined to property used by the public as a street. A person, who allowed his land to be used for a street, was not permitted to reclaim it from such public use at his pleasure. Later by analogy the doctrine was extended to public squares, public cemeteries, public school grounds and the like.⁴¹ Its extension to property devoted to church purposes in England, where there is an established church, which is as much a part of the machinery of government as townships, cities, and counties are with us, was not unnatural. In all these cases the purpose was a strictly public one. Public, municipal or ecclesiastical officers would assume such control over the property as was called for by the circumstances. When we come to America, however, after the early church establishments had been swept away, a different situation is presented. Church purposes in the United States are strictly private purposes.⁴² They are, of course, of more than passing interest to the general public. In a modified sense, they may even be called public purposes. Says the Missouri court in a dedication case: "It is presumed that in the nineteenth century, in a Christian land, no argument is necessary to show that church purposes are public purposes. . . . To deny that church purposes are public purposes, is to argue that the

⁴⁰ *Beatty v. Kurtz*, 2 Pet. 566, 582.

⁴¹ *Sturmer v. County Court*, 42 W. Va. 724, 730, 26 S. E. 532, 36 L. R. A. 300.

⁴² *Liondais v. Municipality No. 2*, 5 La. Ann. 9.

maintenance, support and propagation of the Christian religion is not a matter of public concern. Our laws, although they recognize no particular religious establishment, are not insensible to the advantages of Christianity, and extend their protection to all in that faith and mode of worship."⁴³ Though therefor the beneficiaries in the case of a verbal gift of land to an American church are limited and though there is no public officer to manage the property thus donated, the doctrine of dedication has been extended to such a case.⁴⁴

This doctrine is put on the ground of estoppel. It is obviously unfair that a person, who has allowed his property to be used and improved by a congregation, should be allowed to assume control of it at his pleasure. It makes no difference just how this permission has been given. "A dedication may be made without writing; by acts in pais as well as by deed. It is not at all necessary that the owner should part with the title which he has; for dedication has respect to the possession, and not the permanent estate. Its effect is not to deprive a party of title to his land but to estop him, while the dedication continues in force, from asserting that right of exclusive possession and enjoyment which the owner of property ordinarily has. The principle upon which estoppel rests is, that it would be dishonest, immoral and indecent, and in some instances sacrilegious, to reclaim at pleasure property which has been solemnly devoted to the use of the public, or in furtherance of some charitable or pious object. The law therefore will not permit any one thus to break his own plighted faith; to disappoint honest expectations thus excited, and upon which reliance has been placed. The principle is one of sound morals, and of most obvious equity, and is in the strictest sense a part of the law of the land."⁴⁵

But the mere appropriation by an owner of his land to the uses of a church is not sufficient to constitute a dedication. A manufacturing company which builds a city and as part of it a church for the use of its working men, but which retains full control over the property, will not be deemed to have effected a dedication.⁴⁶ The king of Spain, who acquires property and

⁴³ *Hannibal v. Draper*, 15 Mo. 634, 639.

⁴⁴ *Benn v. Hatcher*, 81 Va. 25, 29.

⁴⁵ *Hunter v. Sandy Hill*, 6 Hill (N. Y.) 407, 411, 412. See *Benn v. Hatcher*, 81 Va. 25, 29.

⁴⁶ *Attorney General v. Merrimac Manufacturing Co.*, 80 Mass. 586.

builds a church in 1792 out of the funds in the royal chest, and who thereafter manages the property and sells it in 1807 to a private purchaser, will be deemed to have conveyed a complete title to the purchaser.⁴⁷ Something more than a mere appropriation to church purposes is therefore necessary. There must be an unequivocal act of donation, which shows an intent of the owner to divest himself to some extent of the ownership or power of control over his property and to vest an independent interest in some other person or body. Such intention may appear from a writing with or without seal, or from a plat or may rest in whole or part on parol declarations.

Probably the most persuasive evidence of an intention of a donor to dedicate property to religious purposes will be afforded by a plat. It is elementary that streets marked on such a plat are dedicated to the public. There is no reason, since the doctrine of dedication has been extended to churches, why the same rule should not apply where some particular lot is marked so as to indicate clearly an intention to devote it to some church purpose. Thus in the leading case of *Beatty v. Kurtz*⁴⁸ a plat made in 1769 had one lot marked "for the Lutheran church." The church, an unincorporated body too weak to maintain a minister, built a block schoolhouse on the lot, which was used occasionally for public worship. It also used the lot as a cemetery. The maker of the plat had repeatedly declared his willingness to give a deed to the congregation, but none in fact was ever executed. After his death his heirs claimed the lot. The Supreme Court of the United States however sustained an injunction issued against them on the ground that by the plat and the subsequent declarations of the owner the lot was clearly dedicated to religious purposes and could not be reclaimed. Similarly lots in a plat crossed with red lines and marked "church grounds" while on the margin of the plat was a notation that these lots were "intended for church grounds" have been held to be dedicated to public worship.⁴⁹

⁴⁷ *Antoner v. Eslavas Heirs*, 9 Port. (Ala.) 527.

⁴⁸ 2 Pet. 566.

⁴⁹ *Hannibal v. Draper*, 15 Mo. 634. See also *Lavalle v. Strobel*, 89 Ill. 370, 382, and *St. Paul's Church v. East St. Louis*, 245 Ill. 470, in which inscriptions, "English Graveyard" and "English Church," on six lots in a plat, were held sufficient, to prove a donation of these lots to the English-speaking inhabitants of the locality. In Louisiana a flat containing a large square marked "Place de l'annunciation" on which the

But plats are not the only instruments which may serve as a foundation for a dedication. Deeds, though invalid for one reason or another, may be clear evidence of an intention to dedicate property to religious purposes. Deeds, void because the grantor, a married woman, had not been subjected to privy examination⁵⁰ or because the grantee, a religious society, was unincorporated⁵¹ may therefor be effective as showing an intention to donate the property for religious purposes, and as estopping the owner from reclaiming it. Such a dedication may even attach to an absolute deed to individuals, where the consideration for the deed is raised by voluntary subscriptions, the understanding all the time being that the church was to be the beneficiary.⁵²

Nor is even an instrument under seal necessary for this purpose. An ordinary written contract may be fully sufficient to establish a dedication. Thus a subscription paper subscribed by a number of contributors, one of whom donated a piece of land, on which to build the church, while the others donated money with which to build it, will be effective to prove a dedication of the land in question.⁵³

In all the cases so far considered there has been a writing of some kind. This, however, is not necessary. A dedication for the use and benefit of a religious society may be made wholly by parol.⁵⁴ An owner of land who represents to a congregation that he will donate the land, provided they build a church on it, will therefore, after the church is built, not be permitted to reclaim the land, though no deed nor written contract of any kind has been executed.⁵⁵

plan of a church clearly appeared, which plan was marked "Eglise de l'annunciation," has been held not to create a dedication, either because the purpose was not a public one, *Lioudais v. Municipality No. 2*, 5 La. Ann. 9, or because the dedication had not been accepted, *Xiques v. Bujac*, 7 La. Ann. 498. The question before the Louisiana court was, whether the property should be used as a common or should be divided into building lots by the heirs of the person, who had executed the plat.

⁵⁰ *Deepwater Railroad Co. v. Honaker*, 66 W. Va. 136, 27 L. R. A. 388, 66 S. E. 104.

⁵¹ *Callson v. Hope*, 75 Fed. 758.

⁵² *McKinney v. Griggs*, 68 Ky. 401, 96 Ann. Dec. 360.

⁵³ *Baptist Church v. Presbyterian Church*, 57 Ky. 635.

⁵⁴ *Hollar v. Harney*, 4 Ky. Law Rep. 988; *McKinney v. Griggs*, 68 Ky. 401, 405, 96 Am. Dec. 360.

⁵⁵ *Atkinson v. Bell*, 18 Tex. 474.

The question whether an acceptance of a dedication is necessary has given rise to a conflict in the authorities. The necessity of such acceptance has been denied by the Missouri court and affirmed by the Louisiana court, both in cases involving a dedication by designation on a plat.⁵⁶ Since all the cases on dedication lay great stress on the subsequent possession of the beneficiaries and many of these cases put their decision directly on the ground of estoppel, there can be no doubt that the decision of the Louisiana court is the correct solution of the difficulty. Without an acceptance of the dedication it is impossible to apply the doctrine of estoppel to the situation. It is not unfair that a dedicator should repossess himself of the property which he has vainly offered as a gift. The beneficiaries must at least have accepted the gift before they can have any equity as against him. It follows that even where a dedication was accepted for a time and then rejected, the full property rights revest in the dedicator, unless the rejection has been by only part of the beneficiaries. Thus where property is dedicated to all religious societies of the locality and four of these societies build churches of their own and cease to use the dedicated property, they will be treated as having renounced all their rights in it and such implied renunciation will be as effective as if it had been expressed in the most solemn form.⁵⁷

What is the proper remedy in case of disturbance of dedicated property? It has been held that, while an express trust excludes a dedication⁵⁸ a dedication may create a charitable trust.⁵⁹ There is at any rate a strong resemblance between a dedication and a trust in the separation of the legal and equitable title that results under both.⁶⁰ Judges therefore sometimes use the word dedication in speaking of trusts and the word trust in speaking of dedication. The situation in the two cases being so similar and the estoppel in dedication being an equitable estoppel, it follows that the most appropriate remedy is by an injunction or by other equitable relief. Such accordingly has been the form in which these actions have come before the various courts beginning with the case of *Beatty v. Kurtz*.⁶¹ Says Story, J., in this

⁵⁶ *Xiques v. Bujac*, 7 La. Ann. 498; *Hannibal v. Draper*, 15 Mo. 634.

⁵⁷ *Baptist Church of Lancaster v. Presbyterian Church*, 57 Ky. 635.

⁵⁸ *Price v. Methodist Church*, 4 Ohio 514, 545.

⁵⁹ *Curd v. Wallace*, 37 Ky. (7 Dana) 190, 30 Am. Dec. 85.

⁶⁰ *Hamlin v. Webster*, 76 Atl. (Me.) 163; *Beaver v. Filson*, 8 Pa. 327; *Ludlow v. St. John's Church*, 124 N. Y. Supp. 75.

⁶¹ 2 Pet. 566.

case: "The remedy must be sought, if at all, in the protecting power of a court of chancery, operating by its injunction to preserve the repose of the ashes of the dead and the religious sensibilities of the living."

Summing up, the ordinary way in which church organizations in the United States acquire real estate is by deed or will. Where these fail, either because they are void, or wholly non-existent, the possession of property by a congregation will nevertheless be upheld, if it rests on any meritorious ground whatsoever. In case the congregation is incorporated and has been in possession sufficiently long, the right of the original owner will be held to be barred by adverse possession and the church corporation will be vested with the full title. On the other hand, where the church is unincorporated or its possession has been too short for the purposes of the statute, the original owner, if he has in any manner evinced an intention to donate the property, will, by such acts of dedication, be held estopped to dispute the possession of the church. He will, however, retain the legal title and even a contingent remainder in the equitable title.

CARL ZOLLMAN.

CHICAGO, ILL.